



POLICE DEPARTMENT

September 24, 2008

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Edward Schymanski
Tax Registry No. 905022
52 Precinct
Disciplinary Case No. 83505/07

The above-named member of the Department appeared before me on August 19, 2008, charged with the following:

1. Said Police Officer Edward Schymanski, assigned to the 52 Precinct, on or about June 30, 2007, while off-duty, in the confines of [REDACTED], having been at the scene of an unusual police occurrence where said Officer unholstered and pointed his firearm at a civilian, known to this Department, and where the [REDACTED] State Police were called and responded to said incident, did fail and neglect to remain at said location and did fail and neglect to promptly notify the Operations Unit regarding said incident.

P.G. 212-32, Page 1, Paragraph 1 & Note – DUTIES AND RESPONSIBILITIES

The Department was represented by Stephen Bonfa, Esq., Department Advocate's Office, and the Respondent was represented by Stuart London, Esq.

The Respondent, through his counsel, entered a plea of Guilty to the subject charge. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent, having pleaded Guilty, is found Guilty as charged.

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SUMMARY OF EVIDENCE IN MITIGATION

The Respondent testified that he has been with the Department for 15 years. For the last ten years he has been on patrol in the 52 Precinct handling radio runs on the 4 to 12 tour.

He worked the day before June 30, 2007 and he got off from work at 2335 hours. He then changed and proceeded home. He was driving a Honda CRV headed west on Interstate 84 between exit 2 and 1 when a car cut him off and then started to jam on his brakes. He would back off and the other driver would slow down until he got close to him and then he would jam on his brakes again. When the other driver moved over to the right the Respondent proceeded in the left lane. The other driver then got behind him and was so close that the Respondent could not see his headlights in the rearview mirror.

The Respondent got off at exit one and went to the traffic light. The other car was behind him. The Respondent then drove to a gas station he goes to every night in [REDACTED]. The other driver pulled in behind him. When he stopped at the pumps the other driver placed his car in front of him, blocking his car. The other driver's door was open before the car stopped. The driver threw the car in "park" and started charging towards his door. At that time the Respondent drew his firearm. He had his wallet out to pay for the gas and with his other hand he displayed his shield.

The Respondent did not know the driver, did not recognize the car and did not have any conversation with him. He just said "whoa" because the driver was charging at him.

The other driver turned around, got back in his car and drove around to the front of the convenience store and started screaming, "He's got a gun." The Respondent

unholstered his weapon and went to the convenience store with his ID out. He said "this is why I have it, what's your problem?" The driver said "nothing, sir" and ran to the back. The Respondent went back to his car.

Noting that it was one o'clock in the morning, on a dark highway, not knowing the intentions of this other person and still being in fear for his safety, the Respondent left the area. As he was going home he saw headlights in his rearview mirror and out of concern he passed his house and only after the other car passed did he turn around and go home.

The Respondent stated that when he got home he notified the New York State Police. He did not notify this Department or the New Jersey police.

The next day he went to work and notified his delegate and told him the situation. The delegate told him to find the Integrity Control Officer (ICO) and let him know. When he got to work he could not find the ICO throughout the whole tour. The Respondent acknowledged that he used poor judgment in not telling the desk officer when he could not find the ICO.

After that the Respondent had a "swing out" (regular days off) for three days followed by July 4th which he had off as a vacation day. The Respondent acknowledged that he did not notify anyone during that period of time.

On July 5th after roll call he went to the ICO who sent him to Captain Corrado who notified the Internal Affairs Bureau. He was then modified. Prior to that, no one had notified him about the incident.

On cross-examination the Respondent agreed that he could have stayed in his car backed up and gone around the other driver at the gas station. He stated that he called his

delegate as he was going in for the following tour on June 30th. He indicated he called his delegate to ask for advice as to what to do. The Respondent said he did not stay at the scene of the incident because he was concerned for his safety. He stated that he left the scene first to de-escalate the situation. He acknowledged that the other driver did not display a weapon.

New Jersey State Police Investigation Report

The Department placed into evidence a copy of the New Jersey State Police Investigation Report into this matter, (Department Exhibit 1) and the Respondent placed into evidence the IAB Investigating Officer's Report, (Respondent's Exhibit A).

The New Jersey State Police Investigation Report indicates that on June 30, 2007 New Jersey State Trooper T. J. Taylor and his partner responded to a gas station in "██████████" at 0103 hrs.

Upon their arrival they encountered ██████████ who stated that he was traveling from New York to New Jersey on Route 84 when he was involved with a Black Honda CRV in a road rage incident. ██████████ further advised that the drivers were tailgating each other and slamming on their brakes. ██████████ stated that he stopped at the gas station on Route 23 in Montague and he noticed that the same individual was pumping gas at the self-serve station and proceeded to confront him about his aggressive driving. ██████████ advised them that the suspect flashed what appeared to be a gun at him and ██████████ ran inside to call 911. The suspect then ran into the store and identified himself as a law enforcement officer.

The report further indicates that the suspect left the scene before their arrival but that he had been identified as the Edward T. Schmanski, (spelling as in the report), the Respondent in this case.

In a later entry in the report Trooper Taylor indicates that he had reviewed the surveillance video. He notes that "the video depicts the complainant following the suspect's vehicle closely as it approaches the self-serve pump at the station. It then cuts to the complainant running into the store to speak to a store employee and then running back out and staring at the suspect. The suspect then comes into the store and holds a black object above his head. The black object appears to be a wallet holding a badge." The report goes on to indicate that the camera that covers the pump did not activate during the incident.

This portion of the report also recounts the Respondent's version of the events.

The report concludes:

"The investigation revealed that the suspect was a law enforcement officer with the right to carry an off duty weapon and utilized the same in self defense in fear of the complainant's irrational behavior when he confronted the complainant (probably meant "suspect") at the pump. The complainant admitted to confronting the suspect in an aggressive fashion and the surveillance video showed no reason to believe otherwise. This case is to be considered unfounded closed."

The report and its conclusion are approved by two sergeants. The IAB report (RX A) merely indicates that the abovementioned report was received and repeats, in substance, its conclusions.

FINDINGS AND ANALYSIS

There are no allegations of misconduct regarding the underlying act of drawing his gun nor does there seem to be any question that the Respondent's decision to leave the scene was appropriate. The Respondent admits that he did not properly and promptly report this incident as required. He claims he spoke to a union representative when he returned to work after the incident who told him to report it to his Integrity Control Officer. When that officer was unavailable, instead of reporting it to the Desk Officer or other appropriate authority, he allowed several days to pass until he could contact his Integrity Control Officer. The parties agreed that as a result of the Respondent's report this Department contacted the appropriate authorities in New Jersey.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined, see *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on August 1, 1993. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Department has recommended a penalty involving the loss of 20 vacation days. The Respondent has pleaded guilty and offered his explanation in the hope that his explanation will result in a lesser penalty. This Court agrees that the Respondent has made a reasonable case for some modification of the penalty.

The Respondent is not charged with any misconduct in connection with his drawing or pointing his weapon. Indeed on the whole it does not seem inappropriate

under the extraordinary conditions he faced on that night. His statement that he left the scene because he felt that he might be in danger seems to be reasonable and is certainly a substantial mitigating factor.¹ The central issue in this case is that the Respondent failed to promptly notify the Department.

While the Respondent obviously failed to report the incident to proper NYPD authority in a timely fashion he did in fact report it. In this regard it is important to note that he did not report it under pressure or because outside events compelled him to.

Indeed, it is possible that had he not reported it, the incident would never have become known to the Department. In short he was not trying to hide the fact that this incident occurred. Further, the delayed report does not appear to have adversely affected the ability of the police in New Jersey to complete their investigation.

The Department has cited Disciplinary Case No. 81975/06 signed 03/06/07 in which a 20 day penalty was imposed as a basis for their penalty request. That case is somewhat different from this one. The Respondent in that case, while off-duty, pointed a gun at a civilian and ordered the civilian out of his car and then frisked him. There were four specifications covered by the 20 day penalty in that case including one involving the Penal Law offense of "menacing," something not charged in this case. Another specification dealt with failing to remain at the scene of an incident. No mitigating factors were put forward on that issue as there were in this case. Yet another specification dealt with that Respondent's failure to notify the Department, again no

¹ There was some question as to whether this Respondent was ever really charged with inappropriately leaving the scene. There is only one specification and the Assistant Department Advocate in his opening statement, explaining the charges, spoke only about the failure to report and never mentioned the failure to remain at the scene, indeed he stated: "The gravamen of Police Department's issue with the conduct of this police officer was he did not immediately notify the New York City Police Department."

mitigating factors were put forward. This apparently differs from the present case where the Respondent mitigated the misconduct and did notify the Department, albeit late.

Moreover there are other cases which involve a failure to report an incident and the penalties actually cover broad range that appears to be governed by the specific circumstances of the case. For instance in Disciplinary Case No. 82267/06 the failure to report allegations of corruption or serious misconduct resulted in a penalty of 32 suspension day while in Disciplinary Case No. 81607/06, the failure, on two occasions, to report serious instances of alleged domestic violence resulted in a penalty of only five days.

In this case the off-duty incident was quite serious in that it involved pointing a firearm at another person. The matter should have been reported promptly to the appropriate local police authority and this Department. Considering that, his prior service record, and the mitigating factors noted, this Court recommends a penalty of 15 vacation days.

Respectfully submitted,

APPROVED

JAN 21 2009
Raymond W. Kelly
RAYMOND W. KELLY
POLICE COMMISSIONER

Martin G. Karopkin
Martin G. Karopkin
Deputy Commissioner-Trials